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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re JA.A. et al., Persons Coming Under
the Juvenile Court Law.

B250420

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

(Los Angeles County
Super. Ct. No. CK69440)

Plaintiff and Respondent,

v.

C.C.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County.

Annabelle Cortez, Judge. Affirmed.

Judy Weissberg-Ortiz, under appointment by the Court of Appeal for Appellant.

John F. Krattli, County Counsel, Dawyn R. Harrison, Assistant County Counsel,
and Stephen D. Watson, Deputy County Counsel, for Respondent.

Mother, C.C., appeals the dependency court's jurisdictional orders as to her two most recently born children. We affirm.

FACTS

Mother and Father, G.A., are the parents of the two children, Ja.A., born in April 2011, and Jy.A., born in July 2012. Mother is the parent of five additional children who have been involved in prior dependency proceedings or who are not under Mother's legal care. In 2007, the dependency court adjudged two of Mother's children (D.B. and J.J.) to be dependents of the court based upon evidence showing that Mother prenatally exposed both to drugs. Mother failed to reunify with the children and in 2009 both were adopted. Three other children are in guardianships.

In February 2012, the Los Angeles Department of Children and Family Services (DCFS) received information that Father had been arrested for domestic violence upon Mother. When DCFS interviewed Father at the Men's Central Jail, he said Mother used drugs and associated with drug dealers; he described Mother as being "obsessed" with drugs.

When interviewed by DCFS, Mother admitted that she used marijuana. Mother described the domestic violence incident as follows. She indicated Father was her fiancé, and that the two had a disagreement after which she kicked him out of the family home. The next morning, Father returned and broke a window and pushed Mother. Mother went to a cousin's house, leaving Ja.A. and another of Mother's children, Ga. J., in the family home with her sister-in-law.¹ Father followed Mother to the cousin's house, where he was arrested.

In March 2012, DCFS filed a petition on Ja.A.'s behalf. The petition alleged Mother failed to protect Ja.A. in violation of Welfare and Institutions Code² section 300,

¹ Ga.'s father is in state prison in Lompoc. Ga.'s paternal grandmother told DCFS that she had been granted legal guardianship of Ga. when she was born "to prevent her from going into the system."

² All further undesignated section references are to the Welfare and Institutions Code.

subdivisions (b), based on her history of abusing drugs. Further, that Mother abused Ja.A.'s siblings in violation of subdivision (j), posing a risk of harm to Ja.A., because Mother's other children, D.B. and J.J., had received permanent placement services due to Mother's substance abuse. The detention report detailed Mother's prior dependency proceedings, which included a referral when Ja.A. tested positive for marijuana at her birth. The report also summarized Mother's significant criminal history, including a drug-related conviction in 2008. On March 2, 2012, the dependency court detained Ja.A., released and her to Mother with orders directing Mother to submit to drug testing. The court issued a restraining order against Father.

Mother tested positive for marijuana and cocaine in late March 2012. In April 2012, the dependency court detained Ja.A. in foster care based on Mother's drug test. Mother failed to appear for two scheduled drug tests in May 2012.

In July 2012, Mother gave birth to Jy.A. Because Mother had tested positive for drugs in March 2012, while pregnant with Jy.A., the DCFS social worker in Ja.A.'s case followed up to determine if there were similar concerns as to Jy.A. When questioned by DCFS, Mother described her daily marijuana use as "trivial," and stated that she saw no problem with having used marijuana while pregnant with Jy.A. Mother said her positive test for cocaine in March 2012 could have resulted because she had "experimented" with ecstasy.

In July 2012, DCFS filed a petition on behalf of Jy.A., alleging counts pursuant to section 300, subdivisions (b) and (j), based on Mother's drug use. The dependency court detained Jy.A. in foster care.

On April 18, 2013, the dependency court sustained both petitions. The court found that both Mother and Father had a history of substance abuse which placed the children at risk of physical harm. Further, the court found Father engaged in domestic violence against Mother in the presence of the child Ja.A. which placed both children at risk of harm. On April 19, 2013, the court adjudged both children to be dependents of the court. The court released the children to Mother under DCFS's supervision and ordered Mother to continue participation in drug testing and programs.

Mother filed a timely appeal.

DISCUSSION

Mother contends the evidence does not support the dependency court's findings and orders asserting jurisdiction over Ja.A. and Jy.A.³ Mother is mistaken.

It is long-settled that a parent's prenatal drug use will support a conclusion that a child is at risk of physical harm and in need of the dependency court's protections. (*In re Troy D.* (1989) 215 Cal.App.3d 889, 900; *In re Stephen W.* (1990) 221 Cal.App.3d 629, 639.) Mother has a long history of drug abuse, with attendant problems in caring for her children. She lost older children in prior dependency court proceedings due to her drug abuse. Mother used drugs while pregnant with Ja.A. and Jy.A., and told DCFS that her drug use while pregnant was trivial and not a problem.

In re Christopher R. (2014) 225 Cal.App.4th 1210 is instructive. There, similar to the case before us today, mother used drugs while pregnant and displayed a "cavalier" attitude toward her parenting obligations. Division Seven of our court concluded that the mother's drug use while pregnant "unquestionably" placed the health of her unborn child at risk, and supported the jurisdictional requirement that the parent's actions endangered the child. (*Id.* at pp. 1219-1220.)

To avoid such a conclusion, Mother argues the evidence does not show that Ja.A. and Jy.A. were at risk "at the time of the adjudication hearing." Mother argues this is so because there was evidence showing that she had, by the time of adjudication hearing, completed a one-year substance abuse program. We are not persuaded. Mother is basically asking us to reweigh the evidence. Based upon Mother's extensive history of drug abuse, her comments admitting yet discounting her drug use while pregnant, and the fact that she tested positive for drugs while enrolled in a drug program, the dependency

³ In its respondent's brief and by way of a request for judicial notice, DCFS indicates that the dependency court sustained a further petition after the jurisdictional findings and orders which are the subject of Mother's current appeal. Although it may be true, as DCFS says, that Ja.A. and Jy.A. will remain under the jurisdiction of the dependency court by virtue of the later orders, we will address the jurisdictional findings and orders challenged here.

court reasonably inferred that Mother was still not be free from her drug abuse problems as of the time of the adjudication hearing. As a result, there was a risk of physical harm to her two, very young children going forward. We do not accept Mother's implicit argument that her completion of a drug program established as a matter of law that there was no risk of harm to her children.

We also reject Mother's argument that the dependency court's decision not to remove Ja.A. and Jy.A. from her custody demonstrates that the court found the children were not at risk of harm, necessarily defeating that jurisdictional requirement. In order to sustain a section 300 petition and adjudge a child to be a dependent of the court, the court must be convinced by a preponderance of evidence of a risk of harm. (§ 355, subd. (a).) Once a child is adjudged a dependent of the court, the court may not remove a child from a parent unless it is convinced by clear and convincing evidence that there are no other reasonable means to protect the child short of a removal order. (§ 361, subd. (c).) A decision not to issue a removal order does not undermine the dependency court's jurisdictional findings and orders. Jurisdiction and removal are separate matters, subject to differing standards of proof. The absence of a removal order in the current case demonstrates nothing more than that the dependency court did not find by clear and convincing evidence that there was no alternative protection available, for the risk of harm that it found to exist, other than removal.

Finally, we reject Mother's argument that we must find the dependency court's findings under section 300, subdivision (j), to be unsupported by the evidence because the evidence does not support the court's finding under section 300, subdivision (b). Mother's argument as to subdivision (j) is predicated on her arguments — addressed above — that the evidence was not sufficient to support the subdivision (b) count. Mother's argument relies on cases such as *In re Savannah M.* (2005) 131 Cal.App.4th 1387 and *In re Janet T.* (2001) 93 Cal.App.4th 377, where the reviewing courts reversed subdivision (j) findings after determining that subdivision (b) findings were not supported by substantial evidence.

Mother's argument as to the subdivision (j) count fails because we have found the evidence supports the dependency court's findings as to the subdivision (b) count. As we explained above, we find the evidence supports the dependency court's conclusion that Ja.A. and Jy.A. are at risk of harm from Mother's drug abuse problems. Our perspective is identical when we look at the risk of harm from Mother's "direct" drug abuse problem harmfully affecting Ja.A. and Jy.A. under subdivision (b), and when we look at Mother's drug abuse problems as to Ja.A.'s and Jy.A.'s siblings which support a finding of harmful affects on Ja.A. and Jy.A. under subdivision (j).

DISPOSITION

The dependency court's findings and orders are affirmed.

BIGELOW, P.J.

We concur:

RUBIN, J.

FLIER, J.